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JOHN F. DAVIS, CLE

IN THE

Supreme Court of the United States

No. 1107

JOSEPH RIZZO and ROSE RIZZO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

By JOSEPH RIZZO
51 E. 99th Street
Bratenhal
Cleveland, Ohio

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To the Honorable Earl Warren, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Petitioner, Joseph Rizzo, and Rose Rizzo, prays that writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, in the above entitled cause.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court together with findings of facts, or conclusion of law; record page 28 herein printed in Appendix A, has not been reported in an offi-

cial or unofficial report. The District Court's opinion and order denying petitioner motion for rehearing is printed in Appendix B, page 29.

The order of the United States Court of Appeals for the Sixth Circuit printed in Appendix C, page 30 hereto, has not yet been reported in an official or unofficial report.

The order denial of rehearing, petition by United States Court of Appeals Sixth Circuit, printed in Appendix D, page 31, has not yet been reported in an official or unofficial report.

The list of petitioner's documents, filed in District Court and Court of Appeals is printed in Appendix E.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on October 21, 1966. Rehearing was denied on December 1, 1966. The jurisdiction of this Court is invoked under Title 28 U.S. Code, Section 1254, providing for review of decisions of the United States Court of Appeal by this Court.

QUESTIONS PRESENTED

1. May a receiver, attorney, court of appeals, district court, Internal Revenue Service commissioner, director, or agents, bankruptcy court, or any other court, or individual, intervene, ignore, or maintain jurisdiction when citizen, defendant petitioner has not exhausted all administrative remedies he is pursuing.

2. May a former Assistant U.S. Attorney, employee of government, practice or represent a court in case related to his former duties, upon leaving government service, during periods October 1961.

3. May an attorney be employed by a court, as in this case, when he has an adverse interest in the case before the court.

4. Is it ethical for an attorney, who files false reports, under oath, represents more than one client, in same case, purchases assets for another client, illegally sold, in same case, while representing the courts.

5. Is it ethical for a receiver who violates rules of courts, to protect, take inventory, make monthly reports, who mismanages, ignores theft of further assets, who violates bond by such action since the courts recent actions, January 9, 1964, or that added actions of theft have or been taken while under the protected appointment of opposed receiver, to date, completely ignored.

6. May a court ignore a question of law presented, upon appeal, and by so doing refuse to enter an order which would compel the district court to determine the proceedings before it in accordance with rules of the Federal Rules of Civil Procedure.

7. Is a party to litigations deprived of property without due process of law, in violation of Fifth Amendment of the United States Constitution, when a court of appeals approves an order of a district court, which order was rendered without regard to rule, 1,8(d), 12(h), 52(a) and 81(c) of the Federal Rules of Civil Procedure.

8. May a court of appeals refuse to determine, or hear questions of law, specifically assigned as error on appeal in violation of Title 28, United States Code, Section 46, which requires that cases, and controversies, shall be heard, and determined by ... court of appeals.

9. May an attorney, receiver, ignore illegal actions of Internal Revenue Service director, who at the time was without jurisdiction based upon false claims reports without due notice to parties, upon assets illegally held, having fair market value of $308,000.00.

10. Is it legal for this same attorney, receiver, to ignore all laws and destroy a complete plant and product and all drawings, records, test reports, confidential documents pertaining to Rizzo discoveries in designs,

for this receiver to represent purchaser for $600.00, then in order to destroy evidence of past losses, to sell illegally a complete plant and laboratory by auction for pennies, approximately $9,000.00 to souvenir seekers.

11. Is it legal for this attorney, receiver . . .

a. To file a false report of conditions of inventory, an amount which involved a loss proven of $79,974.00 at time false report made?

b. To under oath file such false report to the courts which is proven as false by witness, statements, affidavits, purchase documents, by purchaser of some items and personally pointed out by defendant Rizzo, and others present . . . aware of same.

c. To conspire against a citizen's property?

d. To destroy proprietary item, trade marks, trade name, trade secret, copywritten item, records, drawings, files, which are defense plant, materials, supplies subject of a pending administrative action in pending Army Contract Court of Appeals.

12. Does the fact a notice of appeal is not accompanied by filing fees impair its validity?

13. May a court of appeals deny, refuse to hear or determine an appeal from a decree, appointing a receiver or to determine the propriety or legality of appointment.

14. May a court of appeals ignore the facts presented that Internal Revenue acted illegally, who filed false claimed amounts, reports, who while maintaining a lien and seizure, padlocked doors, premises, made no effort to pursue thefts of assets.

a. May the receiver attorney ignore, or the courts ignore, violate the constitutional rights of a citizen, as stated, Article I-Section 8 . . . by destroying products, defense plant, drive people to unemployment, . . . des-

troy proprietary item of citizen, trade secret, trade name, marks, copywritten . . . as quoted.

The Congress shall have power . . . to promote the progress of science and useful arts by securing for limited times to authors, and inventors, the exclusive rights to discovery.

15. Is a party to litigation deprived from security, from unreasonable searches, and seizures, without due process of law, in violation of the Fourth Amendment of the Constitution, when a court of appeals approves an order of a district court, which order was rendered without regard to rules 1,8(d), 12(h), 52(a) of the Federal Rules of Civil Procedure.

16. Is a party denied certain rights of protection of property and life, being deprived the rights of the Ninth Amendment of the United States Constitution, which states rights of people . . . Quote . . . the enumeration in the Constitution of certain rights . . . shall not be construed to deny or disparage others retained by the people.

17. Is the receiver, local authority, the Federal authority, acting properly, when they ignore, refuse to protect one's property and life, and protect others; is this not a violation, or is it a violation of the Fourteenth Amendment of the Constitution . . . which states. . . it is a violation to ignore citizens' security, equal protection . . . deprive any person of life, liberty, or property, without due process of law . . . or deny to anyone within its jurisdiction the equal protection of law.

18. May a court of appeals deprive a petitioner of property without due process of law by failing to make determination of questions of law presented on appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following Constitutional and statutory provisions are involved in this matter.

UNITED STATES CONSTITUTION

Amendment I-Section 8

The Congress shall have power to promote the progress of science and useful arts by securing for limited times to the inventors . . . authors . . . the exclusive rights to their respective writings and discoveries (trade names, trade marks, trade secrets, copyrights, original rights . . . new discoveries, etc.)

Amendment IV

Security from unreasonable searches, seizures. . .

The right of the people to be secure in their persons, houses, business, papers, and effects, against unreasonable searches, and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation and particularly described the place to be searched and the person or things to be seized (this includes business property, or assets).

Amendment V

Nor shall be deprived of life, liberty, or property, without due process of law.

Amendment IX

Rights reserved to the people.

The enumeration in the Constitution, or certain rights shall not be construed to deny or disparage others retained by the people.

Amendment XIV

2. Nor shall any state deprive any person of life, liberty, or property, without due process of law.

3. Nor deny to any person within its jurisdiction the equal protection of laws.

FEDERAL RULES OF CIVIL PROCEDURE

RULE 1

Scope of Rules

These rules govern the procedures of the United States District Courts in all suits of a civil nature wheth er cognizable as cases at law or in equity with the exceptions stated in Rule 81; they shall be construed to secure the just, speedy, and inexpensive determination of every action.

Title 28-U.S. Code

Court of Appeals

46- Assignment of judges, divisions, hearings...quarum.

C. Cases and controversies shall be heard and determined by a court of division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit, who are in regular active service.

Rule 8

General Rules of Pleadings

(d) Effect of failure to deny, avertments in a pleading to which a responsive pleading is required, other than those as to amount of damages, are admitted when not denied in the responsive pleadings.

Rule 12

Defenses and Objections . . . When and how presented by pleadings or motion, in his answer or reply, motion for judgment on pleadings, or motion for judgment, summary.

(h) Waiver of defenses

A party waives all defenses and objections which he does not present either by motion, or herein before provided or, if he has made no motion, in his answer or reply.

Rule 52 A

Findings by the Court

A. Effect, in all actions, tried upon facts, without a jury of with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon.

STATEMENT

This action commenced in the United States District Court for the Northern District of Ohio, Cleveland, Ohio, on instructions, orders of the Commissioner of Internal Revenue Service, directed to the United States Attorney General's office, Department of Justice, Washington, D. C. to pursue a civil action for withholding tax claimed incurred by Joseph Rizzo, Rudy Praytely, Michael Tavone, formerly D/B/A. General Equipment Co., Conneaut, Ohio, . . . firm forced into involuntary bankruptcy by I.R.S. improper actions.

Note . . . By specific stipulation agreement, verbally and by letter in writing from Internal Revenue Service through U.S. Assistant District Attorney Cimino, the defendant was not limited or barred, or prejudiced in any further litigations, or defenses against United States of America.

Further, by letter, and verbal, the United States Department of Justice, Chief, Litigations Section, stated that civil action would be filed, and at that time defendant may attempt to show tax assessments were improper.

This is just two of the many agreements, commitments made by Internal Revenue Service, plus the fact agreed to have Defendant back in business, and assets restored, in year of September 1962, promises to rectify the improper actions never lived up to . . . These are actions by agents which created unrepairable damages for life of defendant.

Note the false claim reports shown at filing of December 1963, complaint by plaintiff U.S.A. is denied by defendant who alleges in counterclaim, as false, improper, illegal, unjust, arbitrary and capricious; further the various improper irregularities of director, agents, collectors who the commissioner and Internal Revenue are fully responsible, liable . . . responsible for all assets stolen from time lien first commenced, seizure date June 1960 to date.

Defendant states that one of the many issues is seizure of property of owners, unreasonably held, and assets illegally removed, stolen, while under padlocked, posted doors, premises, Treasury posted, under control of I.R.S. upon their forced insistence, the assets stolen, and changes in inventory, an issue where RECEIVER falsely reported in report to courts in the past.

That the Internal Revenue Service was duly notified in more than one instant during the history of this case Defendant Rizzo never denied or refused to pay any legal valid determined tax when determine, providing all assets, property, was in same condition, quantity as when first placed under lien and seizure, under their control by their insistence, or proper restitution made at fair market value for all unavailable items.

Defendants contend it no longer is a matter of claim as the unrepairable damages created by receiver, I.R.S. far exceed any measures of one's life . . . and losses sustained to date.

The Internal Revenue, agents, director, pursued at the outset, and ignored defendants' pleadings, that they were in violation of administrative laws, as defendant was pursuing administrative remedies, before Army, the abusive attitude of agents were beyond any legal reasoning.

The failure of receiver, attornies, Internal Revenue Service, commissioner, director, agents, collector. In area bankruptcy courts, district court, circuit court,

state court, local courts, and individuals . . . to recognize the fact defendants were pursuing and had not exhausted its remedies, administrative remedies, therefore were acting improper, without jurisdiction, . . . injected themselves, or to be injected, interferred, confused, created unrepairable damages.

Further Internal Revenue Service precipitated the destruction of a small business, created by individual citizens, in a high rate of unemployment area, trained, educated 49 people in skills of benefit to date. Had the laws been upheld a small business and its families could have survived.

It is a violation of citizens' constitutional rights, of several amendments, due process of law, right to be heard, right of equal protection of life, property . . .

Further, it is a violation of citizens' CIVIL RIGHTS, the employees, the defendants, the suppliers, the people. Civil rights have been denied, violated by the improper, illegal actions committed to date by Internal Revenue Service and RECEIVER opposed.

It most certainly is a violation of citizens' rights to ignore the lack of power of the receiver, the Internal Revenue Service, the courts, to inject themselves, or to be injected into proceedings, which Congress has committed to the primary jurisdiction of administrative agencies.

It is a violation of citizens' constitutional rights to unreasonably seize, destroy defense plants, materials, products, trade name, trade mark, copyrights, discoveries, drawings, data, related, the receiver, and Internal Revenue did destroy, and violate the citizen's constitutional right by its improper actions, namely November 30, 1962.

Article I-Section 8

The Congress shall have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries.

The defendants opposed the Internal Revenue and courts act to uphold irregularities, unethical actions of attorney who continues to violate, defy the courts and its laws, rule the defendant has never been heard to date.

The following irregularities prove the opposed receiver did file false reports to the courts.

July 1960, 50 completed generator sets were illegally removed, stolen, while under lien and seizure, padlocked door, premises of plant, the agents, director, made no effort to pursue or recover, until 7-1/2 months later, by investigations were discovered by Rizzo, who insisted I.R.S. protect the property under reseizure.

These same units were illegally obtained from said lien and seizure in five different counts during the case history so far. I.R.S. made no efforts in Cleveland Area to pursue, recover or discover, until Mr. Rizzo at the expense of loaned funds by his mother, who made it possible to pursue the series of illegal attempts to illegally obtain this property. Why did the I.R.S. ignore and refuse until compelled to pursue the irregularities of its agents.

In year 1963 the chief of National Collection Office, Washington, D. C., attempted to obtain reports and data in an effort to resolve matters, and he was defied, ignored by the district directors, and agents, as his demands for reports were delayed, ignored for approximately 5 months.

Investigations will reveal this same district office had several instances of irregularities.

During the month of August 31, 1960, several threats, and attempt was made to take Mr. Rizzo's life, disabled him for 6 weeks preventing him from further pursuing the irregularities and conspiracy.

At this same period another attorney Walter Thayer flew in to Cleveland and attempted to harass Rizzo, with threats and efforts to seek a release of possible later date law suits which may be pursued by Rizzo. This attorney conducts one of the most unethical legal practice of any concept of law ... representing 67% creditors filing for bills paid in full by client while representing the other side.

During Month July 1960, to February 1961, $79,974.00 fair market value stolen, while under lien control of I.R.S. agents, director. How can a receiver attorney, ethically state under oath that there was no change in inventory, the present opposed receiver filed a false report, ignored the loss of assets which are proven, while under said lien and seizure.

In February and March, 1961, parts were purchased by U.S. Army which were stolen while under lock and key, posted premises, $9,500.00 approximately obtained, and Internal Revenue Service, or attorney, made no effort to recover or pursue, this part a proprietary item, trade mark, trade secret, discovery, trade name, copy-written was illegally purchased, and legal owner never paid; this item is an issue only before the U.S. Court of Claims, pending suit, separate action. Upon one issue, unrelated to any other action insofar as recovery.

The forementioned history is pointed out to this court to relate events to prove the illegal, improper false report and actions of opposed receiver, during history of this case, motions filed, appealed . . . to date.

The identical approach was pursued by defendant, in motions filed before District Court, which were arbitrarily stricken, stated as being scandalous, dismissed

on technicality, never legally heard or determined, questions of law ignored.

Defendant contends that the destruction of property, product, defense plant, and being deprived of due protection of property, life, and the unreasonable search, seizure, without due process of law, is a violation of constitutional rights, and CIVIL RIGHTS.

November 30, 1962, opposed receiver did unlawfully, illegally conspire, and purchased a complete plant and laboratory, which he arbitrarily placed a ridiculous value of $500.00 while representing the courts and several others in same case, and with complete knowledge of I.R.S. improper action without jurisdiction, said plant was purchased by this attorney while representing the courts, for another client Rubenstein, in order to destroy all evidence available. Complete destruction of this plant material, and product, drawings, data test, the pilot model, cost defendant $65,000.00. In research development, trade secrets, trade name, marks, proprietary item sold for pennies after $600.00 purchase, and resold to souvenir seekers for pennies still this attorney realized a personal gain from fees, on $9,000.00 sale illegal ly conducted. This plant has a fair market value then at $308,000.00, to date figure is approximately 30% to 50% greater.

This is a direct violation of citizens' constitutional rights outlined in Questions Presented, page 3, item 4, 5, 6, 7, 8, 9, 10.

Order of district court filed January 10-1-50 Pm. 64, appointing a receiver, against property of individuals D/B/A. General Equipment Co. was premature, in error in contradiction to stipulated agreement to wait for defendant's answer, and legally heard, petitioner alleges that action taken by the courts is in error, invalid.

The failure to recognize the counterclaim which includes paragraphs opposing the receiver was not due or

submitted until March 1964, therefore defendant was denied due process of law, and constitutional rights to date the defendant has not been legally heard.

Further error is that the order of court, as adjudged and decreed, that Lynn Richards be appointed a receiver or property of Joseph Rizzo, Rudy Prayately, Michael Tavone D/B/A. General Equipment Co., a partnership.

The parties involved or mentioned in petition, partnership was dissolved, by bankruptcy, and had no further interest or rights against assets legally owned by Industrial Equipment Co., Rose Rizzo.

The court was without jurisdiction as proceedings in the firm's bankruptcy, and forced individuals, bankruptcy were incompleted during receiver appointment, in fact until October 1965 . . . U.S. Code Title 26, 6873, unpaid claims.

Any portion of a claim for taxes allowed, in a receivership proceedings, or any proceedings under the bankruptcy law act, which is unpaid shall be paid by the taxpayer, upon demand from the secretary or his delegate after the termination of such proceeding.

Was the court acting properly when everyone was aware that the firm was no longer in existence, and the bankruptcy proceedings incompleted up to October 1965, approximately 2 years later; was complaint legal when it referred to a dissolved firm? Was appointment of receiver proper, January 10, 1964 prior to petitioner's answer being legally heard, and, during a period bankruptcy proceedings were incomplete.

The receiver, courts, did violate the constitutional rights of citizen, defendants, in more than one count.

Further the Civil Rights of a citizen, defendant, were violated at same time.

Defendant, Rose Rizzo, a substantial creditor of the former firm, involuntary bankrupt, in order to protect

her investments, and to pursue irregularities, did legally obtain all of the trustees' rights in bankrupt, the administrative rights, legal rights which includes all assets, and any and all assets available, February 7, 1962, ever since this date has expended thousands of dollars to pursue the illegalities and irregularities.

Further the certificate of commissioner, I.R.S., filed by plaintiff, respondent, request to appoint a receiver for Joseph Rizzo, Rudy Prayetly, and Michael Tavone, D/B/A. General Equipment Co. is grossly in error, as ownership, ceased upon adjudication, bankrupt; therefore, complaint as a matter of law was invalid, and unrepairable damages exist, which created during this period.

Further evidence of error, invalid improper complaint action is the No. one item. At the outset that had the courts, and if the courts, receiver, are to respect the administrative laws, and comply with the rulings pertaining to exhaustion of administrative remedies prior to any other courts to intervene. The plaintiff, respondent violated the constitutional and civil rights of petitioner, which deprived citizen, employees of employment, business, family funds invested.

That the receiver, attornies, district court, bankruptcy court, I.R.S., individuals or any other lower courts involved lacked jurisdiction to pursue the former firm, the individuals, until citizen, defendant, exhausted all administrative remedies.

Is it proper for the citizen, defendant, to be deprived of CONSTITUTIONAL RIGHTS, CIVIL RIGHTS. These were ignored by the court and representatives of district court.

Is it the fault of a citizen who has been denied right to be legally heard, and the further confusion created by unjust delay, red tape, unsound reasoning?

It has been said that there is no subject on which the opinion of the Supreme Court is more definitely fixed than it is on the lack of power of the courts to inject themselves, or to be injected into proceedings which Congress has committed to the primary jurisdiction of administrative agencies . . . page 126, Chapter 12, Ohlinger, Federal Law.

The past actions, and conflict of interest, by opposed receiver, are shown in motions, affidavits, supporting evidence, all sufficient to prohibit the individual from participating in any manner before the courts as a matter of law.

The various points, facts, shown in records from Sixth Circuit court, transcript should reveal all items and fact petitioner has not been heard. List in Appendix E, page 32.

The records wholly fail to disclose any regard, or determination by the district court to consider the actions of receiver, which are just cause to even consider him as a receiver or otherwise before the court.

The records wholly fail to disclose any regard, consideration, or determination to the fact that receiver, in accordance with rules of court, has currently since the court's improper action January 9, 1964, grossly ignored violated the laws of court. He openly defies, ignores rules, ethics and neglects to perform duties of a bonded receiver. Title 28-U.S. Code. The following further violation,

Petitioners property, illegally held, remains unprotected, mismanaged and equal protection of property denied.

From January 9, 1964 to date Rule 9 of court not performed; inventory, monthly reports never filed. Petitioner has proof, reason to state, that further assets of great value, while under government and his forced con-

trol, are stolen, disappeared, and no effort made to enforce the law, protect the citizen's property.

November 22, 1965 Petitioner brought this point to the attention of assistant U.S. Attorney Cimino, Cleveland, Ohio, who assured the matter would be taken care of and Internal Revenue Director notified, to date the laws of protection have not been enforced. Exh. 2.

November 22, 1965 petitioner brought the matter to the attention of local authorities, in Conneaut, Ohio, by letter. This was neither replied or enforced. Also, notice was given Justice Department, Washington, D.C., Chief, Litigations, orally and by letter, December 4, 1965, and no effort made to protect the citizen or his property. Exh. 2.

Is this not a violation of a citizen's constitutional rights, equal protection of law, and civil rights being denied citizen.

The receiver, attorney, in violation, in default of bond in itself is sufficient cause to dismiss and hold the receiver jointly liable, and release all available assets to the legal owner Rose Rizzo, Industrial Equipment Co.

In light of the motions filed, the questions presented, the facts, the matters of law, the supporting documents, affidavits, the records as filed, there is no reason why the court should have not granted petitioners the relief prayed for in motions filed May 17, 1965; no reason for denial of defendants reconsideration requested June 28th 1965; no reason to deny defendants reply to plaintiffs answer, to defendants motion for reconsideration filed July 26, 1965.

Both the orders of the district courts and the affirmance by the court of appeals, can only be explained by a finding that the district court chose to disregard and ignore the Federal Rules of Civil Procedure, and was permitted to do so by the court of appeals.

The Federal Rules of Civil Procedure are to be applied in all suits of civil nature, whether cognizable as cases at law or in equity, Rule 1.

The district court made no findings of fact, entered no conclusions of law, made no reference in its memorandum and entered no judgment or order on motions, points of law, claims of defendants, petitioner, against the plaintiff, respondent; notwithstanding that the allegations of petitioner were established by the records before the court, and were uncontroverted, unopposed, uncontested.

A review of records reveals, establishes also that the district court never made findings of fact, rendered no conclusions of law; or referred in its judgment order to opposing facts against attorney, receiver.

Upon rendition of the decision by the court of appeal petitioners requested a rehearing, the petition requested rehearing, and to reconsider the appeal for error, among other reasons, that the court in adopting the order failed to rule or hear questions of law.

Petition for rehearing was timely, permitting mail time, notice from Clerk, received dated October 21, 1966, received November 1, 1966, and clerk advised by long distance of filing, petition mailed from Washington, D.C. November 8, 1966, air mail.

Petition for rehearing denied by courts of appeal December 1, 1966.

Said appeal to the circuit court was the result of obtaining no relief in the district court, petitioners prosecuted an appeal from the district court order, to the United States Court of Appeals, for the Sixth Circuit; on appeal, petitioner complained of the failure of the district court to grant relief prayed for in motions and the district court's refusal to make a finding of fact, entered no conclusion of law; in fact nothing was said or has been said by either the district court or the court of appeals which alludes to the merits or disposition of the unopposed claim of petitioners.

REASON FOR ALLOWANCE OF WRIT

The appeal which has been brought to this court presents issues concerned with the fundamentals of the administration of justice in the federal system.

Presents issues concerned with the fundamentals of the justice in matters effecting the CONSTITUTIONAL LAWS passed by United States Congress, for the protection of all citizens in U.S.A. These issues also concern matters effecting the civil rights of citizen in U.S.A.

Initially, this court must determine whether it will permit a district court to disregard and ignore the Federal Rules of Administrative Laws, of Civil Procedure, U.S. Code Laws. Secondly, there must be resolved the question whether failure of the district court to adhere to the federal rules resulted in deprivation of petitioner property without due process of law. The third question present on an appeal is whether a court of appeals must decide questions of law presented on an appeal as required by statute. Lastly, there is presented to this court the question whether petitioners were deprived of due process of law when the court of appeals refused to decide issues of law, presented on appeal. Further Questions of law are shown under forementioned paragraphs, questions presented. Pages 3, 5.

It is clear that the district court disregarded the Federal Rules of Civil Procedures, in refusing to grant Petitioner the relief prayed for in motions submitted.

It is equally clear that the court of appeals ignored petitioner plea that it reverse the order of the district court so that the proceedings would conform to and be in accordance with the rules.

Respondent, plaintiff, never filed any response, answer or other pleading directed to defendants, petitioners', motions.

In giving meaning to Rule 1, courts of appeals, including the Sixth Circuit Court of Appeals, have stated without qualifications . . . that the Federal Rules of Civil Procedure have the full force and effect of statute. *Rumsey v. George E. Failing Co.*, 333 F2.d 960 (10 Cir.), *Nordmeyer v. Sanzone*, 315 F.2d 780 (6th Cir.), *American Musicians Fed. v. Stein*, 213 F.2d 679, 686 (6th Cir.) *Bendix Aviation Corp. v. Glass*, 195 F. Supp. 267, 272 (3d Cir.), District Courts amplifying these pronouncements have stated further that the Federal Rules of Civil Procedure are binding on the district courts as they are on counsel. *Barrezueta v. Sword S.S. Line*, 27 F. Supp. 935 (S.D.N.Y.), *Beasly v. United States*, 81 F. Supp. 518, 527 (E.D.S.C.), *Seibs Hatcheries v. Lindley*, 13 F.D.R. 113, 119 (W.D. Ark.), *Westland Oil Co. v. Firestone Rubber Co.* 3, F.R.D. 55,56 (D.C.N.D.).

Notwithstanding Rule 1 and the statement of the cited decisions, it is clear that the district court failed to adhere to or invoke Rule 8,(d) Rule 12,(h) and Rule 52 (a) of the Federal Rules of Civil Procedure.

Rule 8 (d) states that averments in a pleading which are not denied stand admitted, the allegations of the motions were never traversed in any manner or form, they therefore stood admitted.

Rule 12 (h) states that all defenses and objections to pleadings are waived unless raised by motion or in answer; no defenses or objections were interposed to the motions, briefs, therefore, all defenses and objections were, or which might have been asserted, were waived.

Rule 52,(a) requires the district court in actions tried without jury to find the facts specially and state separately its conclusions of law thereon; the district courts as concerned petitioners' claim made no finding of fact and stated no conclusions of law.

1. The failure of respondent, plaintiff, to deny any of the allegations in the motions, or to interpose any de-

fense thereto, clearly entitled petitioner to the relief which is sought, at the very least. The district court was under an obligation to give finding of fact and state conclusion of law which would permit a revelation as to what the court's concept of the determining factor and legal standards may have been. *Commissioner v. Duberstein*, 363 U.S. 278, 292, 4 L. Ed. 2d 1218, 1229, 80 S. Ct. 1190.

By reason of said foregoing, petitioner submits that if the Federal Rules of Civil Procedures mean what they say and the courts in the federal judicial system have fairly interpreted their effects and the scope of their application, this writ should be granted.

2. The failure of the district court to render its judgment, and conduct proceedings before it in accordance with and pursuant to the Federal Rules of Civil Procedure, has resulted in petitioner being deprived of property without due process of law, in violation of the Fifth Amendment to the United States Constitution..

The district court's failure to conduct the proceedings before it in accordance with and pursuant to the Federal Rules of Civil Procedures is clear supra; it is equally clear that if the proceedings in a district court were not in accordance with the rules of civil procedure as in the case at bar, the requirements of due process of law has not been satisfied. As stated in *Endicott-Johnson Corp. v. Encyclopedia Press, Inc.*, 226 U.S. 285 288, 69 L. Ed. 288, 292, 45 S. Ct. 61.

The word of due process of law, when applied to judicial proceedings, means judicially a course of legal proceedings according to those rules and principals which have been established in our system of jurisprudence for the protection and enforcement of private rights . . . cited cases . . . They require a proceeding which, observed, observing the general rule thus established, follows form of law appropriate to the case . . . emphasis supplied . . . 266 U.S. 285, 288, 69 L. Ed. 290, 292.

3. The refusal of the court of appeals to determine controversies of law presented on appeal was in disregard and violation of title 28, U.S. Code 46,(c) which requires that cases and controversies shall be heard and determined by court of appeals.

The direction of the statute that controversies . . . presented to courts of appeals shall be heard and . . . determined . . . is a clear mandate to the court of appeal to decide controversies presented on an appeal *N.L.R.B. v. Radio & Television Broadcasting Eng. Union* 364 U.S. 573, 579, 5 L. Ed. 2d 302, 307, 81 S. Ct. 330. In the case cited this court construing a similar phse stated:

> The words . . . hear and determine the dispute, convey not only the idea of hearing but also the idea of deciding a controversy. emphasis supplied . . . 364 U.S. 573, 579, 5 L. Ed. 2d 302, 307, 81 St. Ct. 330.

What has been stated in the forementioned paragraph with regard to petitioner, constitutional rights equally apply in the court of appeal's failure to recognize.

4. The court of appeals' failure to determine the controversies presented on appeal, and all other points of law, was in derogation of the FIFTH AMENDMENT of the United States Constitution, in that it deprived petitioner property without due process of law.

Again the violation of constitutional rights, include the civil rights of the citizen also.

What has been said, stated above, with regard to petitioners being deprived of due process of law by the proceedings in the district court is equally applicable to the conduct of the court of appeals, in failing to rule on questions of law presented on the appeal.

5. The established rules and principals which govern appelate review by a court of appeal require that a controversy presented on appeal be determined, 28 U.S.

Code 46,(c) failure to determine the controversy presented on appeal is manifestly therefore not in accordance with established rules and procedures which govern appelate review.

6. Sec. 129 of the judicial code provides for an appeal to the circuit court of appeals from a decree appointing a receiver. Thus it is open in that way to any party, proper, who is aggrieved by the appointment of a receiver to raise the question as to the proprietary or legality of the appointment. In Brown (CCA) I-242, Fed. 452.

This again is a refusal of court of appeals to hear and determine an issue; in doing so violated citizen constitutional rights and civil rights.

7. In addition to the above, the refusal of the court of appeal to determine the questions of law concerning petitioner's claims, deprived petitioner of its rights to a fair hearing; the right to a fair hearing is unquestionably within the concept of due process of law. (Two recent case decisions of this court, affirming the right to a fair trial hearing, are: *Armstrong v. Manz,* 380 U.S. 545, 552, 14 L. Ed. 2d 62, 75, S. Ct. 1187; *Holt v. Virginia,* 381 U.S. 131, 136, 14 L. Ed. 2d 290, 293, 294, 85 S. Ct. 1375).

7a. Petitioner submits that the right to be heard, and the administrative laws, of one exhausting all administrative remedies, prior to any other court to intervene, or individual to intervene, is of no consequence in the federal judicial system, if as in the case at bar, what is heard is not duly regarded, considered, or determined, by the court of appeal, the record wholly fails to reveal, disclose any regard, consideration or determination, by the court of appeals of the error, and disregard to administrative laws, which is a part of justice, in the Federal system, and Congress, and United States Constitution Acts.

If the Court of Appeal, and District Court, are permitted to ignore cases and controversies presented on appeal, involving administrative law, this court should so state; if the courts are not permitted to ignore cases and controversies presented, including exhausting of administrative remedies prior to any other court to intervene, inject themselves, or to be injected, this court should so state.

Administrative jurisdiction may be defined as power, given by law, to hear and decide controversies. It consists of two elements, jurisdiction over the subject matter and jurisdiction over the person. Jurisdiction of the subject matter is the power lawfully conferred to deal with the general subject involved in the Proceedings, page 126, Chapter 12, Ohlingers Federal Law, W.H.Anderson Co., Cincinnati, Ohio, Administrative Procedures.

8. Petitioner submits that the right to be heard is of no consequence in the federal judicial system if, as in the case at bar, what is heard is not duly heard, regarded, considered, or determined by the court of appeals. The record wholly fails to disclose any regard, consideration or determination by the court of appeals of the assignment of errors pertaining to petitioner's claims.

The conduct of the court of Appeals in failure to grant to petitioner a full hearing, including judicial review, in accordance with statutory mandate, in itself warrants the issuance of the writ prayed for. Similarly federal procedure requires appellate review in civil cases. Appellate review is accordingly a requisite of process of law, in the federal judicial system, which requisite if not satisfied deprives a litigant of due process. *Cole v. Arkansas*, 383 U.S. 196, 201, 202, 92 L. Ed. 644, 747, 648, 68 S. Ct. 514; *Frank v. Mangum*, 237 U.S. 309, 327, 59 L. Ed. 969, 980, 35 S. Ct. 582.

9. Extensive examination of decisions of this court has failed to disclose an instant where this court has defined the obligations of court of appeals to hear and

determine controversies, or what constitutes due process in civil appeals, if the court of appeals are permitted to ignore cases and controversies presented on appeal, this court should so state. If the court of appeals are not permitted to ignore cases and controversies presented on appeal, this petition should be allowed.

10. Wherefore upon review of the files, records, motions, supporting documents, and questions presented, administrative, constitutional and statutory provisions violated, of citizens' constitutional and civil rights by receiver, Internal Revenue Service, and all matters of law related to the case at bar, if the court of appeals are not permitted to ignore these laws, this petition should be allowed.

11. If the Federal courts, as in this case, are permitted to ignore the administrative laws, and exhaustion of all administrative remedies prior to any court to intervene or other agency to intervene, it is submitted, would be to grant a license to attorneys, receivers, Internal Revenue Service, bankruptcy courts, district court, state court, local courts, and individuals to mock, abandon those rules and procedures, which are the touchstones of the administration of justice, in the federal system and the United States Constitution, and Acts of Congress.

If the courts as in this case are permitted to ignore the lack of power of the courts to inject themselves, or to be injected into proceedings which Congress has committed to the primary jurisdiction of administrative agencies, and to ignore facts and permit receiver actions which are so highly irregular that they constitute an embarrassment to the federal judiciary, would be to abandon, mock those rules and procedures which are the touchstone of Congress. This court should allow this petition. To do otherwise, it is submitted, would be to grant license to the courts, attorneys, to abandon those rules and procedures which govern the administration of justice in these United States.

CONCLUSION

Petitioner is at a loss to explain the conduct of the district court and judge, or the court of appeals, in refusing to grant or even pass upon its claim. Further, the constant refusal for Internal Revenue Service, and Justice, to admit its seryants violation of citizens constitutional rights violated in many counts, and the continued refusal to hear and determine points of law, all presented by documents related thereto, in files.

Petitioner respectfully submits that procedures employed by plaintiff, respondent, and by both courts below, were so highly irregular that they constitute an embarrassment to the federal judiciary.

By any standards of procedures employed in the federal courts, the district court, and court of appeals, were both required to allow the motions, claims, they did not do so and their reasons for not doing so, and for not con sidering the claims, cannot be ascertained. The omissions, in failing to state findings of fact and conclusions of law, standing alone mock the rules prescribed by this court and judicial code.

If the federal courts, as in this case, are permitted to ignore claims and defenses in civil suits, a precedenc of magnitude and frightening potential will have been established, not only in civil litigations, but in criminal matters as well.

If the federal courts, as in this case, are permitted to ignore claims whereby receiver, Internal Revenue Service, violate laws and constitutional rights of small business citizen, are completely ignored, the courts are assisting many others who have been injured by identical violations being so highly irregular that they constitute an embarrassment to the federal judiciary and Congress who assist to originate these laws . . . violated.

If the court, as in this case, are permitted to ignore claims that receiver appointed illegally without cause, who since improper action by courts, under bond fails to protect citizen's property, fails to report further theft, destroys defense product, citizen's property, being so highly irregular that it constitutes an embarrassment to the Federal Government, and create further damages, and liability increase to the government, being so highly irregular that they constitute an embarrassment to the federal judiciary system, would indeed granting license to continue such illegal practices.

This court should allow this petition for writ of certiorari. To do otherwise, it is submitted, would be to grant license to the district courts and court of appeals to abandon those rules and procedures which are the touchstone of the administration of justice. In the Federal system, surely at the very least, there must be further proceedings in the district courts, looking toward new and adequate findings of fact. *Commissioner v. Duberstein,* 367 U.S. 278, 292, 4 L. Ed. 2d 1218, 1229, 80 S. Ct. 1190.

Respectfully submitted,

JOSEPH RIZZO

APPENDIX A

In the
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

June 16, 1965

UNITED STATES OF AMERICA
Plaintiff

v.

JOSEPH RIZZO, et al.
Defendants

No. C-63-909

CONNELL, C. J.

Upon consideration, the court having determined that the paper filed by Joseph Rizzo on May 17th, 1965 is not one provided for in Rule 7 of the Federal Rules of Civil Procedure, and further, that the paper contains immaterial and scandalous matter, it is

ORDERED that the paper filed by defendant Joseph Rizzo on May 17th, 1965, be stricken pursuant to Rule 12 of the Federal Rules of Civil Procedure.

JAMES C. CONNELL,
Chief Judge

Dated: June 16, 1965

APPENDIX B

DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed Sept. 17,
11-18 Am. 65
Clerk, U.S. District
Court, Northern
District of Ohio

UNITED STATES OF AMERICA
Plaintiff

v.

JOSEPH RIZZO, et al.
Defendants

No. C-63-909
ORDER

CONNEL, C.J.

Upon consideration,

It is ORDERED that the motion of the defendants, Joseph Rizzo, and Rose Rizzo for reconsideration of the order of June 16, 1965 is overruled.

_____
Chief Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOSEPH RIZZO AND
ROSE RIZZO,
Defendants-Appellants.

No. 17504

ORDER

FILED
Oct. 21, 1966
Carl W. Reuss,
Clerk

BEFORE: WEICK, Chief Judge,
CELEBREEZE and PECK,
Circuit Judges.

Upon consideration it is ordered that the motion of plaintiff-Appellee to docket and dismiss this appeal be and it is granted.

Entered by order of the Court

Carl W. Reuss
Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed: Dec. 1, 1966
Carl W. Reuss, Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

No. 17504

ORDER

JOSEPH RIZZO AND
ROSE RIZZO,
Defendants-Appellants

BEFORE: WEICK, Chief Judge,
CELEBREEZE and PECK,
Circuit Judges,

Upon consideration, it is ordered that the petition for rehearing, filed herein out of rule, be and it is hereby denied.

Entered by order of the Court.

Carl W. Reuss
Clerk

APPENDIX E

TRANSCRIPT OF THE RECORDS

1. Complete records from outset of suit to date, pertaining to defendants' opposition, mostions against the receiver of property owned by third party.

2. Complaint by plaintiff U.S.A., Nov. 23, 1963.

3. Order of court re receiver, W/O Notice 1-20-64.

4. Bond filed, 1-20-64, Resolute Ins. Co., W/O Notice.

5. Stipulation, order granting defendant Rizzo leave to answer, more or plead, until 3-16-64.

6. Answer, counterclaim, by defendants, Joseph Rizzo and Rose Rizzo, filed 3-16-64.

7. Reply of United States of America to defendants' counterclaim, filed 4-8-64. Late reply.

8. Reply of defendants to plaintiff reply to counterclaim, filed with supporting affidavits, documents.

9. Motion by defendant, Rose Rizzo, Joseph Rizzo, to set aside order appointing Lynn Richards receiver, and to dismiss same, filed with affidavits, supporting documents.

10. Order striking defendant Joseph Rizzo's papers filed 5-17-65.

11. Motion by Joseph Rizzo for reconsideration of motion filed 5-17-65. Affidavits in support attached. 6-28-65.

12. Answer by plaintiff to defendants' motion for reconsideration. filed 7-13-65.

13. Request by defendants for leave to file a reply brief re motion for reconsideration.

14. Endorsed ruling overruling motion Joseph Rizzo Rose Rizzo for reconsideration of order June 16, 1965, filed W/O rulings law.

15. Order overruling motion of Joseph Rizzo for reconsideration of order June 16, 1965 without determining matters of law, questions raised.

15-A. Matters filed 6th Circuit Court

1. Filed timely appeal, pd local fees, Nov. 16, 1965.

2. Docket entry of appeal by district court Dec. 17, 1965.

3. Check returned, error in written amount, Dec. 27, 1965.

4. Motion to docket dismiss by plaintiff, July 1, 1966

5. Wire by defendant, answer to above, opposing motion, and requesting appeal docketed, July 7, 1966.

6. Order docketing dismiss appeal, Oct. 21, 1966.

7. Petition for rehearing by defendant, filed Nov. 8, 1966.

8. Motion for restraining order upon receiver, Nov. 8, 1966, never acted upon or reply or opposed by plaintiff.

9. Additional copies mailed 15 more, mailed Dec. 6, 1966, 2:00 p.m. by defendants.

10. Letter and order filed Dec. 1, Rec. from Clerk stating that petition for rehearing, filed herein out of rule, be and it is hereby denied.

11. Letter to court by defendant requesting complete determination by the 3 judges, including transcript, voted by judges.

EXHIBIT 1

CHART OF EVENTS RE OPPOSED RECEIVER

Jan. 9, 1964 Receiver appointed, prior to our answer to show cause, as agreed, stipulated, defd. given, until March 16, 1964 to answer oppose, I.R.S. complaint improper, were W/O jurisdiction, lacked power to inject themselves, or to be injected, in proceedings where administrative procedures were not exhausted. Further, bankruptcy proceedings were not completed, therefore were without jurisdcition.

March 16, 1964 Defendants' answer filed, with counterclaim and opposition to any receiver.

March 17, 1965, Defendants' motion filed to dismiss the receiver, based upon conflict of interest, malpractice, irregularities past and present, false reports to court, adverse interest, as shown in motion.

June 16, 1965, Motion denied arbitrarily without hearing dismissed upon technicality, stating papers, facts, were scandalous matters, did not hear or determine legality, questions raised.

June 24, 1965, Reply motion for reconsideration, in accordance with rules of court and supporting brief, documents, affidavits attached.

July 23, 1965, reply from Asst. U.S. Attorney Cimino received 9 days late.

July 26, 1965, Defendant filed request for leave of court same day filed reply brief to U.S. Attorney, late answer motion filed by defendant contained formal charges against receiver; these were never opposed or denied by U.S. Attorney.

Sept. 17, 1965, Judge Connell order issued, that the motion for reconsideration of order June 16, 1965 overruled; this received 91 days late.

To date, motions never heard or determined, as law so provides, constitutional rights, civil rights violated.

Nov. 16, 1965, Notice of appeal filed timely, to Sixth Circuit Court.

Nov. 22, 1965, Investigations revealed further violation by receiver, bonded, further theft of citizen's property, assets transpired; U.S. Attorney Cimino notified of mismanagement, theft, and to date no effort made to protect citizen's property; U.S. Dept. Justice, Chief, Litigations also notified; no effort made to uphold constitutional rights of citizen-owner.

Nov. 8, Brief filed by defendant Rizzo; also a separate motion for restraining order against receiver filed; this never acted upon or stated by Sixth Circuit Court.

Also filed in the United States District Court are 10 motions, which support petitioners' arguments of law, and rights of citizen, these motions filed Nov. 30, 1966 with due notice to all parties of interest; have not been opposed, denied, objected, or answered, within period allowed by the court rules.

All of these pointed out items support that receiver should be barred and held liable, with Internal Revenue Service, for violation of constitutional civil rights.

Defendant motion that plaintiff Internal Revenue Commissioner, director, agents, collector, Cleveland Office, show cause within 10 days why the administrative laws passed by Congress, duties have not been performed, U.S. Code, Title 5, False reports of collectors. Is this not a violation of citizen's constitutional rights, for no answer, opposition, or denial (filed by defendant Nov. 30 1966).

Nov. 2, 1966, Motion that Internal Revenue Service, be ordered to recover one generator set. This item, a proprietary unit, property of Rose Rizzo, Industrial Equipment co. Trade Name, mark, original design which was

discovered, stolen from N.Y. warehouse, is one of 50 illegally detained by I.R.S. and possibly out of the country in enemy hands being used as model for illegal duplication. No reply or opposition answer received from plaintiff within time rules specify.

EXHIBIT 2

J. Rizzo
51 E. 99th Street
Cleveland, Ohio

Nov. 22, 1965

To the Mayor, City of Conneaut
and the Chief of Police

Re: Warehouses and bldg. and contents located at Mill St., Jackson St., and others.

Gentlemen:

Reference is made to my encountering your officer Mike Peace, on Sunday, Nov. 21, 1965 at approximately 5:00 p.m. at warehouse located Mill Street, known as Old Freight House.

That I pointed out the break in of this bldg. and the mess found; further that I made a request of the officer that a complete report be made upon which it was discovered the conditions of the break in, that the main door was wide open, the hasp torn off, leaving the lock intact; also that I did not enter the premises but left conditions as found.

That with witness did board up the broken door, window, in order weather would not damage interior, or contents.

As explained to the officer, this warehouse and 2 others, bldg. Main St., Jackson St., former school house Harbor St. are part of the litigations in federal court whereby funds arrived out of assets, stolen illegally, removed while under Internal Revenue lien & seizure, and padlocked doors, money was partly applied against these bldgs.

Involved are bldg. and assets at E. Main St.
Jackson St. Concrete bldg, and contents, machinery, equipment & materials.
Also 1 Dodge pickup, 1 Dodge van, 1 International Panel, and one lot of steel tubing, 2 inch, 675 pcs.
Stored outside all inventoried & in hands of govt.
To date.

That proceedings in federal courts are not completed. All of these assets are under Justice Dept., Internal Revenue, Federal lien & seizure and not one tiem to be disturbed; the legal owner Industrial Equipment Co. does have rights of legal protection, and the laws should enforce anyone locally or otherwise, who might interfere with federal lien & seizure, in force.

Your cooperation is appreciated; further it will be appreciated that copies of police reports or any reports on hand be forwarded in order that they may be placed in the records to date.

Very truly yours,

/s/ J. Rizzo

C/C copies to Wash., D.C. Committee
To I.R.S. Comm.
To Justice Dept.
To Federal Courts

EXHIBIT 3

J. Rizzo
51 E. 99th Street
Cleveland, Ohio

Dec. 4, 1965

TO UNITED STATES
ATTORNEY GENERAL
WASHINGTON, D. C.

Dear Attorney General
and Mr. Ugast,

Reference is made to the subject case which has been pending, for some time within your office and the Cleveland, Ohio office.

Further reference is made to my personal contacts and visits with you and your office attornies Maloney, Beigan, and 2 others. Further reference is made to my answer and counterclaim filed March, 1964, in answer to the government complaint.

The appointment of an attorney whom previously violated every law of ethetics in the land, whom has filed false reports, represented purchaser of assets illegally sold by Internal Revenue, while representing the courts, stating falsely a complete plant worth only $500.00 the while representing the Courts, represents purchaser MYER RUBINSTIEN and purchased for $600.00 in a rigged bid, then realized approx. $9,000.00 by illegal selling assets for pennies owned by third party.

Irregardless that this same attorney was appointed receiver over assets owned by third parties and prior to the courts receiving my answer and opposing answer, never heard of decided upon. This is a violation of my constitutional rights and legal rights of rules U.S. Code laws.

This man is bonded and we expect Internal Revenue Services to protect, preserve the assets being illegally detained, while Internal Revenue is without jurisdiction and fully inventoried, Mother and I expect every piece of equipment to remain intact until all issues are decided properly, by proper legal judicial bodies.

On Sunday, Nov. 21, 1965 I visited the Conneaut, Ohio, area to check the plants and equipment under lien and seizure and received one of the greatest shocks to date; the doors were broken into, hasp removed, with locks intact, windows knocked out and premises entered. It is evident this was not the doing of vandalism; it is destruction and work of well planned entry.

I then proceeded to the Jackson St. Bldg. which is another location of assets, inventoried, which are under lien and seizure. This real estate is one of the issues in our counterclaim, whereby funds were misappropriated against the purchase of this bldg. (The machinery and equipment are in inventory, and serial No. shown. This being taken by inventory obtained and last obtained by Richard Rizzo and employee of Richard's, whom witnessed same). Evidence is available equipment of large size has been illegally removed, again while under CURRENT JURISDICTION OF INTERNAL REVENUE, DIRECTIVE, and under a so-called bonded receiver.

What is this world coming to who is permitting all this type of forceful illegal tactics?

We demand an up-to-date inventory be taken with neutral honest individuals present, and compared with the last inventory taken in order to determine the present date losses for which the Government is liable for.

U.S. CODE LAWS TITLE 5-325-page 297 states false reports of collector of Internal Revenue Services will be reported to the President of U.S.A. At this time I must insist this law be upheld and proper action taken to enforce same.

I expect to be in Washington on business and would appreciate a little of the Attorney General's time in order to discuss this matter as any attorney would.

Respectfully yours,

/s/ J. Rizzo

EXHIBIT 4

HISTORY OF IRREGULARITIES RE RECEIVER
Oct. 2, 1961 to Jan. 1964 to Sept. 1965

ONE

Asst. Atty. U.S. Dist. Atty. Clev., May 1959 to Oct. 1960 Upon leaving could not practice any matters connected related to former duties 2 years. U.S. Code law title 18-284. Disqualification of former employees in any matters connected former duties.

TWO

Oct. 2, 1961 Legal Counsel Bankruptcy case General Equip. Atty. for trustee, duties to determine theft-losses of assets removed while under lien & seizure or otherwise. Filed under oath a false report to the courts; this is supported by verified affidavit by Searl's employee, employed by Richard whom assisted with Rizzo.

THREE

Violation of laws. U.S. Code 18-287 False fictitious claims.
18-286 Conspiracy to defraud the govt. with respect to claims.
18-283 Officers or employees interested in claims against the govt. 18-287 False claim.
18-241 Conspiracy against rights of citizens. Chapter II Conflict of interest, 18-207, 18-208 acts effecting a personal financial interest.

FOUR

18-205 Activities of officers and employees in claims against and other matters effecting the govt. order-39 BKRPTCY representation of creditors by receivers or atty. Filed several claims against estate while representing the court in same cause of action. March-June 1962 duties incompleted in past case, and employed as attorney for trustee in the forced personal bankruptcy case of Praytely, Tavone, a related issue.

FIVE

While representing all the forementioned parties and court, within 2 year period of former affiliation represented client Myers in an illegal sale and purchased assets a complete plant office & lab. incl. inventory which he previously stated as worth $500.00 purchased for $600.00 and realized a personal gain in fees by selling illegally for approx. $9,000.00 giving away assets worth thousands. $308,000.00 fair market value at time, 1962.

SIX

Further in summary, conflict of interest, representing Cleveland courts, federal, former employee govt., filed false report, represented creditors, purchaser of materials all at same period — Jan. 1964 — represented courts as receiver in an action without jurisdiction plus our answer was not filed or heard, answer filed March 1964.

SEVEN

EVIDENCE - U.S. CODE LAWS. Local rules-E-Courts affidavit re case 94190, letter complaint filed and copy given asst atty. general Cimino. Affidavits, facts, employees signatures, Exh.-2. proof false report signed by Richards, Asst. Searl's 3-4. Our investigation re Exh. 4-5, affidavit, by assistant of Richard, stating he remembers losses and items, shown from shelves.

EIGHT

April 17, 1963 letter by Richard Exh. 7 affidavit by Richard contradicted by his own asst. sworn statement Exh. 8 — Further proof: petition approx. 60 citizens local familiar with or noticed activities of irregularities.

NINE

Still represented the bkrptcy Praytely, Tavone - 1965 - and pursued malpractice, without jurisdiction as receiver, illegally in Internal Revenue action, Cleveland courts attempts to dismiss Richard were ignored, after the damage committed against Rizzo, as late as Oct. 1965, did not have any legal right or jurisdiction

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1107

JOSEPH RIZZO AND ROSE RIZZO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In 1963 the United States instituted this civil action against, *inter alia*, Joseph Rizzo and his two partners in General Equipment Company in a federal district court to foreclose its federal tax liens for unpaid withholding, F.I.C.A. and F.U.T.A. taxes, with penalties and interest, incurred by the partnership. In January 1964, the district court appointed a receiver to preserve the partnership assets. In May 1965, Mr. Rizzo filed a motion with the district

court to set aside the appointment of the receiver. (Pet. 32, 34.) On June 16, 1965, the district court ordered Mr. Rizzo's motion stricken on the grounds that the paper filed was not one provided for by Rule 7 of the Federal Rules of Civil Procedure and, further, that it contained immaterial and scandalous matter (Pet. 28). Mr. Rizzo's motion to set aside this order was denied by the district court on September 17, 1965 (Pet. 29).

Petitioners filed a notice of appeal on November 16, 1965 (Pet. 35), and the record was received by the clerk of the court of appeals before December 20, 1965 (Appendix, *infra*, pp. 5-6). But petitioners failed to docket their appeal, and on July 1, 1966, the United States filed a motion to docket and dismiss the appeal, which was granted by the court of appeals on October 21, 1966 (Pet. 30, 33). Mr. Rizzo's petition for rehearing was denied by the court of appeals on December 1, 1966 (Pet. 31).

The sole issue before this Court is whether the court of appeals abused its discretion in dismissing petitioners' appeal for failure to docket the case. The issue is not a substantial one and, in our view, warrants no further review.

Rule 73(g) of the Federal Rules of Civil Procedure provides for the docketing of an appeal within 40 days from the date of filing of the notice of appeal, unless an extension of time for docketing is granted by the court upon a showing by the appellant that his inability to effect timely docketing was due to reasonable cause or excusable neglect. And Rule 73(a) provides that an appellant's failure to take any

step beyond timely filing of a notice of appeal is a ground for such action as the court of appeals considers appropriate, including dismissal of the appeal. The dismissal of an appeal pursuant to this provision is a matter for the sound discretion of the appellate court. See *Pyramid Motor Corp.* v. *Ispass*, 330 U.S. 695, 704-705; 7 Moore, *Federal Practice* (2d ed., 1966), §§ 73.11, 73.29, pp. 3204-3207, 3259-3263; 3A Barron and Holtzoff, *Federal Practice and Procedure* (1958), §§ 1559-1560, pp. 89-95.

Petitioners here filed a notice of appeal on November 16, 1965. The correspondence of the clerk of the Sixth Circuit, set forth in the Appendix, *infra*, pp. 6-9, shows that he advised Mr. Rizzo on December 20, 1965, that the filing fee would have to be paid, and the record docketed, before December 26, 1965, and furthermore, that repeatedly thereafter—on December 27, 1965, March 28, 1966, and June 23, 1966—the clerk advised Mr. Rizzo of his failure to docket the appeal. Nevertheless, petitioners never docketed their appeal. There is nothing in the record to indicate that petitioners filed timely motions for extensions of time to docket their appeal or that they sought to proceed *in forma pauperis*. Nor have petitioners suggested or shown that they have been unable to comply with the docketing requirements, or that they had any legitimate reason for their failure to docket.

In these circumstances, the court of appeals did not abuse its discretion in dismissing the petitioners' appeal.

It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

MITCHELL ROGOVIN,
Assistant Attorney General.

KARL SCHMEIDLER,
Attorney.

MARCH 1967.

APPENDIX

UNITED STATES DISTRICT COURT
Office of the Clerk
Northern District of Ohio
Cleveland, Ohio 44114

C. B. Watkins, Clerk

December 17, 1965

Carl W. Reuss, Clerk
United States Court of Appeals
New Federal Bldg.
Cincinnati, Ohio 45202

Re: U.S.A. vs. Joseph Rizzo, et al. Civil Action Number C 63—909.

Dear Mr. Reuss:

There are enclosed the certified original papers and two copies of the docket entries showing the numbers assigned to such papers in the above entitled case.

Very truly yours,

C. B. WATKINS, Clerk

/s/ J. A. Green
J. A. GREEN,
Chief Deputy Clerk

JAG:wmj
Enc.
cc: Joseph Rizzo, PP
51 East 99th St.
Cleveland, Ohio

Merle M. McCurdy
400 Federal Bldg.
Cleveland, Ohio 44114

December 20, 1965

Mr. Joseph Rizzo
51 East 99th Street
Cleveland, Ohio

Re: United States of America vs. Joseph Rizzo, et al (D. C. No. C63-909, Civil)

Dear Sir:

We have received the certified record on appeal in the above-entitled case.

Please forward by return mail, or wire, the filing fee of $25.00 required by the rules of this Court so that the record can be filed and the appeal docketed before the expiration date which is December 26, 1965.

Yours very truly,

CARL W. REUSS, Clerk

Deputy Clerk

December 27, 1965

Mr. Joseph A. Rizzo
51 E. 99th Street
Cleveland, Ohio

Dear Sir:

We are returning your check dated December 22, 1965. The amount shown in figures is the correct amount, $25.00. However, the amount shown in writing is "twenty dollars". Please send us a proper check in the amount of $25.00.

Yours very truly,

CARL W. REUSS, Clerk

CWR:mml
Encl.

March 28, 1966

Mr. J. Rizzo
51 E. 99th St.
Cleveland, Ohio

Dear Sir:

The rules of this court are printed and distributed by Gates Legal Publishing Company, 1380 Dodge Court, Cleveland, Ohio. I understand that they charge $1.00 for each copy of the rules.

At the present time you have no appeal on the docket of this court. Please refer to my letter of December 27, 1965, in which I returned your check for $20.00. The filing fee in this court is $25.00 and your case cannot be docketed until we receive a proper check or money order in that amount.

Yours very truly,

CARL W. REUSS, Clerk

CWR:HT

June 23, 1966

Mr. Joseph Rizzo
51 E. 99th St.
Cleveland, Ohio

Re: United States of America vs. Joseph Rizzo, et al (D. C. No. C63-909, Civil)

Dear Sir:

Please refer to our letters to you dated December 20, 1965, December 27, 1965, and March 28, 1966. We have never received from you the filing fee of $25.00 which is required by the Rules of this Court before your appeal can be filed and docketed. If you intend to go ahead with this case will you please forward a money order for $25.00. If you have decided not to proceed with the appeal will you please so advise me by return mail.

Yours very truly,

CARL W. REUSS, Clerk

CWR:mml

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